

MAR 25 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDDIE LEE FRANKLIN,

Defendant - Appellant.

No. 08-50047

D.C. No. CR-06-00166-DOC-1

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
David O. Carter, District Judge, Presiding

Submitted March 18, 2009<sup>\*\*</sup>

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Eddie Lee Franklin appeals from the 140-month sentence imposed following his guilty-plea conviction for bank robbery, in violation of 18 U.S.C. § 2113(a).

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Franklin contends that the district court abused its discretion by applying the career offender sentencing range corresponding to U.S.S.G. § 4B1.1(b)(c), that the court abused its discretion by sentencing him within a range which included the career offender enhancement, and that the court failed to consider his abusive childhood. We conclude that the district court did not commit procedural error, and that the sentence is substantively reasonable. *See United States v. Stoterau*, 524 F.3d 988, 999-1002 (9th Cir. 2008).

Franklin also contends for the first time in his reply brief that, because the district court granted a criminal history category variance, he was statutorily ineligible for the career offender enhancement. We decline to address this contention. *See United States v. Puerta*, 982 F.2d 1297, 1300 n.1 (9th Cir. 1992).

**AFFIRMED.**